

W.H. SNAVELY

IBLA 96-174

Decided October 24, 1997

Appeal from a Decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CAMC 262707 through CAMC 262711.

Decision set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim—Federal Land Policy and Management Act of 1976: Service Charges—Mining Claims: Abandonment—Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A finding that mining claims became abandoned when an applicant for a small miner exemption failed to reply timely to a BLM inquiry must be set aside when, on appeal, the claimant shows his application conforms to requirements of applicable law.

APPEARANCES: Thomas J. Ward, Esq., Lancaster, California, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

William H. Snavely has appealed from a January 10, 1996, Decision of the California State Office, Bureau of Land Management (BLM), declaring his unpatented mining claims CAMC 262707 through CAMC 262711 abandoned and void for failure to reply timely to a September 11, 1995, request from BLM for information concerning a mining claim maintenance fee waiver sought under the Omnibus Reconciliation Act of August 10, 1993 (Act), 30 U.S.C. §§ 28i through 28k (1994). That inquiry, which was received by Snavely on September 14, 1995, asked him to identify all owners of the claims at issue. The Decision cites 43 C.F.R. § 3833.1-7(d) for the proposition that persons filing a request for waiver of claim maintenance fees must disclose "the names, signatures, and addresses of all owners." Because Snavely did not reply to BLM's inquiry within the 30-day time provided for a response, BLM found the claims "are hereby declared abandoned."

The BLM inquiry sought clarification of a perceived ambiguity in reports furnished by Snavely to BLM concerning his mining claims. Entitled a "Notice" of "Clarification of Ownership Requested," BLM's September 1995 communication to Snavely explained:

A review of our records shows that W.H. Snively and R.D. Camahan are the owners of the Shadow #10 - #14 mining claims (CAMC 262707-11). The regulations at 43 CFR 3833.1-7(d) state in part that the waiver certification shall contain the names, signatures, and addresses of all owners maintaining an interest in the mining claims. The waiver form only has the signature of W.H. Snively.

After outlining actions required to be taken if Camahan were an owner, BLM required a response as follows: "You are hereby granted 30 days from receipt of this notice to clarify the ownership of the above named mining claims. Failure to do so will constitute an abandonment of the mining claims and the claims will be declared null and void." (September 1995 Notice at 1, 2.) Snively did not respond within the time allotted.

The records to which BLM referred in the Notice consist of mining claim location and assessment work notices and a survey plat of the claims at issue. The location notices indicate that five mining claims were located in March 1994 by R.D. Camahan and W.H. Snively. This statement appears in response to a solicitation for a response appearing on the printed form that states: "11. Locator(s) of this lode mining claim are: (Please Print)." Following this numbered question 11, the form asks, in item 12, that the names supplied in answer to question 11 be signed. Both questions were answered with the names of Snively and Camahan. The assessment work notice states, however, that the owner of the claims is W.H. Snively, and the survey plat of the claims recites it was prepared for William Snively. The waiver certification is made by W.H. Snively, whose signature appears in the space provided for the "Owner's Signature" on the waiver form.

On appeal to this Board, Snively explains that he is and has always been the sole owner of the claims, which were located by Camahan acting as his employee, and not as a co-owner. In support of this explanation, he furnishes a statement from Camahan as follows:

I, R.D. Camahan have never had an ownership interest in the following claims located in Kern County i.e.

Claim Names	CAMC Numbers
Shadow No. 10	262707
Shadow No. 11	262708
Shadow No. 12	262709
Shadow No. 13	262710
Shadow No. 14	262711
Shadow Mill Site	262706

Serial no. CAMC 262706 - 711

I was employed by W.H. Snively (owner of above claims) to assist in their location as locator.

Departmental regulations implementing the Act provide that, prior to August 31, for every mining claim in existence between September 1, 1994,

and September 1, 1999, a \$100 maintenance fee shall be paid "for the subsequent assessment year" beginning at noon on September 1. 43 C.F.R. § 3833.1-5(b). This fee may be waived for qualifying small miners. 43 C.F.R. § 3833.1-5(d). To qualify for waiver of the fee as a small miner, an exemption certificate showing entitlement to waiver must be filed "on or before August 31." 43 C.F.R. §§ 3833.1-7(d), 3833.1-6(d)(2).

[1] Unlike the circumstances found to exist in Melvin J. Young, 135 IBLA 336, 338 (1995), there is no suggestion that Snavelly violated filing requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA) grafted onto the Act when he did not respond to BLM's inquiry within the 30-day timeframe allowed, nor does Departmental regulation 43 C.F.R. § 3833.1-7(d) provide that a filing of an incomplete waiver application will, of itself, work a forfeiture; on the contrary, it appears that error or omissions made in filling out the waiver form are considered curable defects, as BLM acknowledged by sending Snavelly the September inquiry that triggered the Decision here under review. In those cases where a forfeiture of mining claims has been found to occur, it often comes about by operation of a statute that imposes forfeiture as a penalty for violation of the law. Compare Dale J. LaCrone, 135 IBLA 203, 210 (1996), finding claims void for failure to comply with FLPMA section 314 filing requirements, with Jack J. Kettler, 68 IBLA 301, 303 (1982), in which we held that "we cannot affirm a decision conclusively presuming a claim to be abandoned and void in the face of evidence to the contrary."

In this case, it does not appear that Snavelly's waiver application was incomplete or incorrect; on the record presently before us, it appears that it was an accurate and complete statement of the ownership of the claims at issue, although responses provided by Snavelly on the waiver form seemed inconsistent with earlier statements on the forms used to record his location notices. Because Snavelly has shown on appeal that his waiver request conformed to requirements of the Act and was not inconsistent with prior statements furnished on earlier forms submitted to BLM, we must set aside the finding that the claims at issue became abandoned because he was late in explaining his situation and remand the case files to BLM to permit adjudication of the information provided by Snavelly on appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is set aside, and the case files are remanded for appropriate action by BLM.

Franklin D. Amess
Administrative Judge

I concur.

James P. Terry
Administrative Judge

